

A) Remarks:

The Examiner rejects claims 1 - 2, 5 - 6, 8, 10 - 11, 14 - 15 and 17, under 35 U.S.C. 102(b) as being anticipated by Beer et al. Reconsideration is requested for the reasons given hereinafter.

On page 3 of the Office Action the Examiner states that “the springs are capable of providing a continuous compressions as they are attached to the plates (Col. 4, lines 31-35).” However, this statement clearly indicates that the Examiner has misread the reference. The reference teaches the exact opposite or totally contrary to the teachings of the present invention as claimed.

Independent claim 1 of the present invention calls for “compression spring means housed in said assembly and configured for continuously urging said screw receiving elements at opposite ends together for thereby providing continuous compressive loading on bone graph material disposed between the vertebral elements” [emphasis supplied]. Beer et al. teaches the exact opposite.

Please refer to lines 37 through 43, in column 4, of the Beer et al. where it is stated “Further, preferably, the spring means 13 exerts a force between the upper 11a and lower 11b plates that is substantially equal to that of a natural disc that is being replaced. The placement of the springs 13a - 13i allow the plates 11a and 11b to move relatively to one another in three dimensions just as a natural disc does.” Clearly the spring means 13 are then continuously urging the screw receiving elements at opposite ends apart, not together, for thereby providing continuous plate separation

forces which would be substantially equal to that of a natural disc that is being replaced, not compressive loading on bone graph material disposed between the vertebral elements.

Accordingly, Beer et al. teaches exactly contrary to the teachings of the present invention as claimed and therefore Beer et al. not only does not anticipate the present invention as claimed, but does not even suggest the present invention as claimed and in fact teaches concepts which would be entirely contrary and detrimental to what Applicant claims and accomplishes.

Applicant is trying to accomplish the exact opposite. Applicant is applying compressive loading on bone graph material disposed between the vertebral elements. Beer et al. is trying to do just the opposite and replace compressive loading that might normally be provided by a natural disc and therefore continually urges the plates apart, not together for compressive loading on a bone graph.

Claims 1 - 2, 5 - 6, 8, 10 - 11, 14 - 15 and 17, were also rejected under 35 U.S.C. 102(e) as being anticipated by Sevrain. Reconsideration is respectfully requested. Once again it appears that the Examiner is misreading the reference. Sevrain shows two plates 30 and 32 which are continually urged apart by springs 39, not "together" as required by Applicant's structure.

In this regard, the Examiner is referred to the paragraph beginning at line 41, in column 6, of Sevrain, wherein it is stated "As in a cigar cutter, a spring 39, as shown in FIG. 2A, is preferably

provided between the upper and lower plates 30 and 32, for instance in the guideways 38, such that the prosthesis P is biased towards its extended position".

Again it is clear as with Beer et al. that Sevrain teaches that the plates 30 and 32 are continuously urged apart, not together, and therefore it would be impossible for them to apply compressive loading on bone graft material disposed between the plates or vertebral elements.

Accordingly, as with Beer et al, it is impossible for Sevrain to anticipate the present invention as claimed. In fact, this reference provides teachings which are even detrimental to the purposes intended by Applicant's structure and teaches structure which provides completely exact opposite results.

Next, then Examiner rejects claims 3 - 4 and 12 - 13 under 35 U.S.C. 103(a) as being unpatentable over Sevrain in view of Richelsoph et al. It is respectfully submitted that this rejection under 103 is not tenable for the same reasons given with regard to the rejections under 102. Sevrain teaches the exact opposite and what is detrimental to Applicant's structure, then obviously it cannot be combined with Richelsoph et al. or any other reference to provide an obvious combination of the present invention.

While an initial glance at Applicant's drawings might appear to indicate that the spring elements are forcing the screw receiving elements at opposite ends apart, and not together, this is not the case. A close study of the drawings, together with the description thereof clearly establishes that

the springs, although they may be compression springs, actually urge the screw receiving elements at opposite ends together, not apart.

Accordingly, it is respectfully submitted that the claims are in condition for allowance, and reconsideration is respectfully requested with the issuance of Notice of Allowance.

Respectfully submitted,

CAROTHERS AND CAROTHERS

Lloyd B. Carothers

Floyd B. Carothers
Attorney for Brian E. Dalton
Fort Pitt Commons, Suite 500
445 Fort Pitt Boulevard
Pittsburgh, PA 15219

FBC:jkc
Reg. No. 24,252
(412) 471-3575
(412) 281-2180
Pittpatent@aol.com

EQ624024127US

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as Express Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on *March 8, 2007*

CAROTHERS AND CAROTHERS

Frank K. Curtiss